

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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DAVID D. ERCOLI, JR.,

Petitioner,

v.

WARDEN LYNEAL WAINWRIGHT

Respondent.

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CASE NO. 1:18-cv-02798  
OPINION AND ORDER

[Resolving Doc. [1](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On December 4, 2018, David Ercoli filed a habeas corpus petition under 28 U.S.C. § 2254.<sup>1</sup> On March 9, 2022, Magistrate Judge William H. Baughman recommended that the Court deny the petition.<sup>2</sup> Magistrate Judge Baughman concluded that Petitioner conceded Grounds Seven and Grounds Ten through Eighteen in his traverse. Magistrate Judge Baughman recommended dismissing Grounds Two and Nine as non-cognizable.<sup>3</sup> In addition, Magistrate Judge Baughman recommended dismissing Grounds Three through Six and Ground Eight as procedurally defaulted.<sup>4</sup> Finally, Magistrate Judge Baughman recommended denying Ground One on the merits.<sup>5</sup>

Magistrate Judge Baughman ordered the parties to file objections, if any, within fourteen days.<sup>6</sup> Neither party objected, and the time to do so has expired.

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<sup>1</sup> Doc. [1](#). Respondent opposed. Doc. [11](#). Petitioner replied. Doc. [14](#).

<sup>2</sup> Doc. [15](#).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 23.

Case No. 17-cv-1034  
Gwin, J.

Under the Federal Magistrates Act, a district court must conduct a *de novo* review of the objected-to portions of a Report and Recommendation.<sup>7</sup> Absent objection, a district court may adopt the Report and Recommendation without review.<sup>8</sup>

Here, no party has objected to the Report and Recommendation, so this Court may adopt the Report and Recommendation without further review. Moreover, having conducted its own review of the petition and the record, the Court agrees that the petition must be denied.

Accordingly, the Court **ADOPTS** the Report and Recommendation and **DENIES** Petitioner's request for a writ of habeas corpus. Furthermore, no basis exists upon which to issue a certificate of appealability.<sup>9</sup>

IT IS SO ORDERED.

Dated: April 5, 2022

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>7</sup> 28 U.S.C. § 636(b)(1).

<sup>8</sup> *Thomas v. Arn*, 474 U.S. 140, 149 (1985); L.R. 72.3(b).

<sup>9</sup> 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).